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Klaus Junk

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EXAMINER

HICKS, VICTORIA J

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/562,215	Applicant(s) JUNK, KLAUS	
	Examiner VICTORIA J. HICKS	Art Unit 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1,4,6-15 and 18-22 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1,4,6-15 and 18-22 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☒ The specification is objected to by the Examiner.
- 11) ☒ The drawing(s) filed on 23 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

This action is in response to the Request for Continued Examination (RCE) filed on 7/15/11. Currently, claims 1, 4, 6-15 and 18-22 are pending in the application. Claims 2, 3, 5, 16 and 17 were cancelled by Applicant and new claims 18-22 were added by Applicant.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/15/11 has been entered.

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Specification

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract

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on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

In order to avoid the use of legal phraseology in the abstract, the term "means" should be removed from this section of the application.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1, 4, 6-15 and 18-22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 recites "**at least one** means of cover firmly bound along the entire perimeter of the second fenestration." No support is provided for this claim limitation in the specification. Claims 4, 6-15 and 18-22 depend on claim 1 and therefore, include the same error.

5. Claim 19 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter

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which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 19 recites that “the means of cover can be sterilized with gamma radiation or **steam**.” No support has been provided for this claim limitation in the specification because this limitation is more broad than what is supported by the specification. The originally filed claim 10 provides support for the means of cover being able to be sterilized by “hot steam.”

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1, 4, 6-15 and 18-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites the limitation “the means of cover” in lines 9 and 11 of the claim. There is insufficient antecedent basis for this limitation in the claim, as the claim previously recites “**at least one** means of cover.” Claims 4, 6-15 and 18-22 depend on claim 1 and therefore, include the same error.

7. Claims 13, 15 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 13 recites “at least two second fenestrations.” This recitation is unclear because in the case of two additional fenestrations, one would be the second fenestration and the other would be the third

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fenestration. It is suggested that Applicant amend the claim to recite "at least two additional fenestrations." Further, it is unclear if the second fenestration of claim 13 is the same as, or in addition to, the second fenestration recited in claim 1 (on which claim 13 depends). Claims 15 and 21 depend on claim 13 and therefore, include the same error.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4, 7, 11, 13, 14, 18 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patnode et al. (US patent 5,143,091), in view of Williams et al. (US patent 5,490,524), in view of Auerbach et al. (US patent 7,316,233) and further in view of Scrivens (US patent 4,027,665).

In regards to claim 1, in Figure 2, Patnode et al. teaches a surgical drape (20) for covering operating sites on a body of a patient comprising a top and bottom surface; a first fenestration (28) in the drape (20) and a second fenestration (29) in the drape (20) spaced from the first fenestration (28) and defining a perimeter.

Patnode et al. does not teach at least one means of cover firmly bound along the entire perimeter of the second fenestration, the means of cover having an elongated form which extends upwardly from the top surface of the surgical drape and terminates

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in a closed upper end, the means of cover including a transparent portion, the transparent portion spaced from the top surface of the surgical drape to permit transmission of radiation by a measurement system to be used in conjunction with the means of reference or the first fenestration covered by an incise film aligned with the top surface of the drape.

However, in column 3, lines 44-45 Williams et al. teaches an analogous device with at least one means of cover (40), which could be placed in the area of coverage of the means of reference, that includes a transparent portion. In column 4, lines 11-15 Williams et al. teaches an analogous device in which the at least one means of cover (40) is bound to the drape by ultrasonic welding, heat sealing, gluing, or using double-sided tape (adhesive strips) along the entire perimeter (42) of the window (40). In Figure 2, Williams et al. teaches that the perimeter (42) of the window (40) is aligned with the perimeter of the fenestration (24) and that the means of cover (40) is adapted to cover a means of reference which protrudes from the level of the drape's (10) surface and is identifiable for a 2- or 3- dimensional measurement system. It would have been obvious for one having ordinary skill in the art at the time of invention to modify the surgical drape taught by Patnode et al. with the at least one means of cover taught by Williams et al. because that element is known to make the surgical drape taught by Patnode et al. applicable for use with measurement systems. It would have been further obvious for one having ordinary skill in the art at the time of invention to modify the surgical drape taught by Patnode et al. with the bound means of cover taught by Williams et al. because that element is known to effectively secure the means of cover

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to the drape. Patnode et al. and Williams et al. do not teach a means of cover that features a form that is elongated or the first fenestration covered by an incise film aligned with the top surface of the drape.

However, in Figure 1, Auerbach et al. teaches an analogous device with a means of cover (3) having an elongated form which extends upwardly from the top surface of the surgical drape (1) and terminated in a closed upper end (32). It would have been obvious for one having ordinary skill in the art at the time of invention to modify the surgical drape taught by Patnode et al. as modified by Williams et al. with the elongated means of cover taught by Auerbach et al. because this element allows the surgical drape taught by Patnode et al. to be used to create a sterile barrier between a surgical site on an extremity and the remainder of the patient's body, as Auerbach et al. teaches in column 3, lines 12-16. Patnode et al., Williams et al. and Auerbach et al. do not teach the first fenestration covered by an incise film aligned with the top surface of the drape.

However, Scrivens teaches in columns 6-7, lines 66- 13 and Figure 1 an analogous device in which the first fenestration (30, 40) is covered by an incise film (70, 71) aligned with the top surface of the drape (20). It would have been obvious for one having ordinary skill in the art at the time of invention to modify the first fenestration taught by Patnode et al. as modified by Williams et al. and Auerbach et al. with the incise film taught by Scrivens because that element is known to keep the fenestration in its proper position on the body of the patient, as Scrivens teaches in column 7, lines 9-11.

In regards to claim 4, Patnode et al., Williams et al., Auerbach et al. and Scrivens teach the apparatus of claim 1 (see rejection of claim 1). Patnode et al. does not teach a means of cover that is made of a flexible material. However, in column 4, lines 25-29 Williams et al. teaches an analogous device in which the means of cover (40) is made of a flexible material. It would have been obvious for one having ordinary skill in the art at the time of invention to modify the surgical drape taught by Patnode et al. as modified by Williams et al., Auerbach et al. and Scrivens with the flexible means of cover taught by Williams et al. because that element is known to allow the surgical drape taught by Patnode et al. to fit over varying sizes and shapes of targeting devices, as taught by Williams et al. in column 4, lines 27-29.

In regards to claim 7, Patnode et al., Williams et al., Auerbach et al. and Scrivens teach the apparatus of claim 1 (see rejection of claim 1). Patnode et al. and Williams et al. do not teach a means of cover with at least one means to reduce the length of the means of cover. However, in column 1, lines 53-56 Auerbach et al. teaches an analogous device in which the means of cover (3) has an adjustable length between the drape (2) and the closed upper end (32). In column 5, lines 60-65 Auerbach et al. teaches that the means of reduction for the reduction of the length is located along the means of cover (3) away from the remainder of the bottom end of the drape (2). Auerbach et al. further teaches that the means of reduction can include a rolling pattern that would allow the upper end to be stretched firmly and smoothly while avoiding creases or other distortions. It would have been obvious for one having ordinary skill in the art at the time of invention to modify the surgical drape taught by Patnode et al. as

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modified by Williams et al., Auerbach et al. and Scrivens with the means of reduction taught by Auerbach et al. because this element is known to allow the surgical drape taught by Patnode et al. to be adjustable to accommodate various anatomical extremities, as Auerbach et al. teaches in the abstract.

In regards to claim 11, Patnode et al., Williams et al., Auerbach et al. and Scrivens teach the apparatus of claim 1 (see rejection of claim 1). Patnode et al. does not teach that the drape is attached firmly to a means of cover. However, in column 4, lines 12-14 Williams et al. teaches an analogous device in which the means of cover (40) is attached firmly to the opening (24) on the surface of the drape (10) by the technology of ultrasonic welding. It would have been obvious for one having ordinary skill in the art at the time of invention to modify the surgical drape taught by Patnode et al. as modified by Williams et al., Auerbach et al. and Scrivens with the attachment method taught by Williams et al. because this element is known to prevent the introduction of non-sterile material to the sterile environment created by the surgical drape taught by Patnode et al.

In regards to claim 13, Patnode et al., Williams et al., Auerbach et al. and Scrivens teach the apparatus of claim 1 (see rejection of claim 1). Patnode et al. does not teach at least two second fenestrations. However, it would have been obvious to one having ordinary skill in the art at the time of invention to provide at least two second fenestrations, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. The addition of at least two second fenestrations to the drape of Patnode et

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al. would provide additional access points that can be utilized during a surgical procedure. Patnode et al. does not teach a means of cover. However, in Figure 2, Williams et al. teaches an analogous device in which the perimeter (42) of a means of cover (40) is aligned with the perimeter of a fenestration (24). It would have been obvious for one having ordinary skill in the art at the time of invention to modify the at least two fenestrations taught by Patnode et al. as modified by Williams et al., Auerbach et al. and Scrivens with the means of cover taught by Williams et al. because that element is known to make the surgical drape taught by Patnode et al. applicable for use with measurement systems.

In regards to claim 14, Patnode et al., Williams et al., Auerbach et al. and Scrivens teach the apparatus of claim 1 (see rejection of claim 1). Patnode et al. as modified by Williams et al., Auerbach et al. and Scrivens does not teach a device wherein the means of cover, measured from the middle point of the fenestration surface at the foot of the means of cover, feature a distance of 10 to 100 cm from the center of the incise film. However, it would have been obvious to one having ordinary skill in the art at the time of invention to position the means of cover such that the means of cover measured from the middle point of the fenestration surface at the foot of the means of cover features a distance of 10 to 100 cm from the center of the incise film, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

In regards to claim 18, Patnode et al., Williams et al., Auerbach et al. and Scrivens teach the apparatus of claims 1 and 4 (see rejection of claims 1 and 4).

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Patnode et al. does not teach a means of cover made of a flexible material. However, Williams et al. teaches in column 2, lines 21-23 an analogous device with a means of cover (transparent window 40) made of a flexible material that is a polymer (acetate film). It would have been obvious for one having ordinary skill in the art at the time of invention to modify the surgical drape taught by Patnode et al. as modified by Williams et al., Auerbach et al. and Scrivens with the flexible means of cover that is a polymer taught by Williams et al. because that element is known to allow the surgical drape taught by Patnode et al. to fit over varying sizes and shapes of targeting devices, as taught by Williams et al. in column 4, lines 27-29.

In regards to claim 20, Patnode et al., Williams et al., Auerbach et al. and Scrivens teach the apparatus of claims 1 and 11 (see rejection of claims 1 and 11). Patnode et al. does not teach a means of cover that is firmly bound to the top surface of the drape. However, in column 4, lines 12-14 Williams et al. teaches an analogous device in which the means of cover (40) is firmly bound to the top surface of the drape (10) by the technology of ultrasonic welding. It would have been obvious for one having ordinary skill in the art at the time of invention to modify the surgical drape taught by Patnode et al. as modified by Williams et al., Auerbach et al. and Scrivens with the firmly bound means of cover taught by Williams et al. because this element is known to prevent the introduction of non-sterile material to the sterile environment created by the surgical drape taught by Patnode et al.

In regards to claim 21, Patnode et al., Williams et al., Auerbach et al. and Scrivens teach the apparatus of claims 1 and 13 (see rejection of claims 1 and 13).

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Patnode et al. does not teach means of cover. However, Williams et al. teaches in column 4, lines 25-28 an analogous device with means of cover (40) that can have varying sizes. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention that the at least two means of cover taught by Patnode et al. as modified by Williams et al., Auerbach et al. and Scrivens can have a minimum outside diameter of 10-50 cm.

In regards to claim 22, Patnode et al., Williams et al., Auerbach et al. and Scrivens teach the apparatus of claims 1 and 14 (see rejection of claims 1 and 14). Patnode et al. as modified by Williams et al., Auerbach et al. and Scrivens does not teach a device wherein the means of cover, measured from the middle point of the fenestration surface at the foot of the means of cover, feature a distance 50 cm from the center of the incise film. However, it would have been obvious to one having ordinary skill in the art at the time of invention to position the means of cover such that the means of cover measured from the middle point of the fenestration surface at the foot of the means of cover features a distance of 50 cm from the center of the incise film, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

3. Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patnode et al. (US patent 5,143,091), in view of Williams et al. (US patent 5,490,524), in view of Auerbach et al. (US patent 7,316,233), in view of

Scrivens (US patent 4,027,665) and further in view of Greco (US patent 5,312,385).

In regards to claim 6, Patnode et al., Williams et al., Auerbach et al. and Scrivens teach the apparatus of claim 1 (see rejection of claim 1). Patnode et al., Williams et al., Auerbach et al. and Scrivens do not teach that the means of cover features at least one means of reduction. However, in Figure 1, Greco teaches an analogous device in which the means of cover (2) features along the surface at least one means of reduction (3), for the reduction of the perimeter of the means of cover (2). It would have been obvious for one having ordinary skill in the art at the time of invention to modify the surgical drape taught by Patnode et al. as modified by Williams et al., Auerbach et al. and Scrivens with the means of reduction taught by Greco because this element is known to allow the surgical drape taught by Patnode et al. to be effectively secured to objects of various sizes.

In regards to claim 8, Patnode et al., Williams et al., Auerbach et al., Scrivens and Greco teach the apparatus of claims 1 and 6 (see rejection of claims 1 and 6). Patnode et al., Williams et al., Auerbach et al., Scrivens do not teach that the means of reduction are realized in the form of removable adhesive strips or simple cords. However, in column 4, lines 48-52 Greco teaches an analogous device in which the means of reduction (3) is realized in the form of a drawstring, which is a simple cord, or adhesive tape. It would have been obvious for one having ordinary skill in the art at the time of invention to modify the surgical drape taught by Patnode et al. as modified by Williams et al., Auerbach et al. and Scrivens with the means of reduction taught by

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Greco because this element is known to allow the surgical drape taught by Patnode et al. to be effectively secured to objects of various sizes.

4. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patnode et al. (US patent 5,143,091), in view of Williams et al. (US patent 5,490,524), in view of Auerbach et al. (US patent 7,316,233), in view of Scrivens (US patent 4,027,665) and further in view of Kienzle III et al. (US patent 6,697,664).

In regards to claim 9, Patnode et al., Williams et al., Auerbach et al. and Scrivens teach the apparatus of claim 1 (see rejection of claim 1). Patnode et al., Williams et al., Auerbach et al. and Scrivens do not teach a means of cover that features pre-shaped moldings on an upper, drape-opposing end for the reception of shapes of the means of reference. However, in column 5, lines 19-26 Kienzle III et al. teaches an analogous device in which the means of cover includes pre-shaped moldings on an upper, drape-opposing end that are similar in size and shape to the means of reference, for the reception of the means of reference. It would have been obvious for one having ordinary skill in the art at the time of invention to modify the surgical drape taught by Patnode et al. as modified by Williams et al., Auerbach et al. and Scrivens with the means of cover with pre-shaped moldings for the reception of the means of reference because this element is known to ensure that the means of cover fits flat and flush against the means of reference so that their positions may be accurately determined by a measurement system, as Kienzle III et al. teaches in column 5, lines 22-26.

5. Claims 10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patnode et al. (US patent 5,143,091), in view of Williams et al. (US patent 5,490,524), in view of Auerbach et al. (US patent 7,316,233), in view of Scrivens (US patent 4,027,665) and further in view of Sklar (US publication 2002/0069882).

In regards to claim 10, Patnode et al., Williams et al., Auerbach et al. and Scrivens teach the apparatus of claim 1 (see rejection of claim 1). Patnode et al., Williams et al., Auerbach et al. and Scrivens do not teach a means of cover that is able to be sterilized. However, in [0019] Sklar teaches an analogous device that includes a means of cover that is able to be sterilized. It would have been obvious for one having ordinary skill in the art at the time of invention to modify the surgical drape taught by Patnode et al. as modified by Williams et al., Auerbach et al. and Scrivens with the means of cover that is able to be sterilized taught by Sklar because that element is known to make the surgical drape taught by Patnode et al. reusable.

In regards to claim 19, Patnode et al., Williams et al., Auerbach et al., Scrivens and Sklar teach the apparatus of claims 1 and 10 (see rejection of claims 1 and 10). Patnode et al., Williams et al., Auerbach et al. and Scrivens do not teach a means of cover that is able to be sterilized with gamma radiation or steam. However, in [0019] Sklar teaches an analogous device that includes a means of cover that is able to be sterilized by gamma radiation. It would have been obvious for one having ordinary skill in the art at the time of invention to modify the surgical drape taught by Patnode et al. as

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modified by Williams et al., Auerbach et al., Scrivens and Sklar with the means of cover that is able to be sterilized by gamma radiation taught by Sklar because that element is known to make the surgical drape taught by Patnode et al. reusable.

6. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patnode et al. (US patent 5,143,091), in view of Williams et al. (US patent 5,490,524), in view of Auerbach et al. (US patent 7,316,233), in view of Scrivens (US patent 4,027,665) and further in view of Teves et al. (US patent 6,820,622).

In regards to claim 12, Patnode et al., Williams et al., Auerbach et al. and Scrivens teach the apparatus of claim 1 (see rejection of claim 1). Patnode et al., Williams et al., Auerbach et al. and Scrivens do not teach that the means of cover has the capacity to be inflated. However, in that abstract and column 3, lines 52-54 Teves et al. teaches an analogous device with a means of cover that is realized with an elastic or plastic material and that has the capacity to be inflated, which would avoid the formation of creases that would distort the radiation directed to or reflected from the means of reference. It would have been obvious for one having ordinary skill in the art at the time of invention to modify the surgical drape taught by Patnode et al. as modified by Williams et al., Auerbach et al. and Scrivens with the inflatable means of cover taught by Teves et al. because this element is known to provide a smooth platform for surgical tools, such as means of reference, as Teves et al. teaches in column 5, lines 60-65.

7. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patnode et al. (US patent 5,143,091), in view of Williams et al. (US patent 5,490,524), in view of Auerbach et al. (US patent 7,316,233), in view of Scrivens (US patent 4,027,665) and further in view of Idris (US patent 4,869,271).

In regards to claim 15, Patnode et al., Williams et al., Auerbach et al. and Scrivens teach the apparatus of claims 1 and 14 (see rejection of claims 1 and 14). Patnode et al. teaches in Figure 2 that the means of cover (24) are located equidistant, to the left and right, from the center of the incise film (20). Patnode et al., Williams et al., Auerbach et al. and Scrivens do not teach that the means of cover are arranged at a distance approximately 40 cm left and right in a perpendicular distance from the center of the incise film. However, in column 2-3, lines 63-6 Idris teaches an analogous device in which the means of cover (24) is located 30 inches (76.2 cm) from the top edge of the film (10) which is 70-140 inches (177.8-355.6 cm) in length. Therefore, the means of cover (24) can be placed approximately 40 cm from the center of the incise film, depending on the length of the film (10). It would have been obvious for one having ordinary skill in the art at the time of invention to modify the surgical drape taught by Patnode et al. as modified by Williams et al., Auerbach et al. and Scrivens with the dimensions taught by Idris because this arrangement is known to allow the surgical drape taught by Patnode et al. to be cover more of a patient when in use, as Idris teaches in column 3, lines 2-6.

Response to Arguments

Applicant failed to amend the abstract in order to overcome the examiner's previous objection to the specification. The objection to the specification has therefore been maintained. Applicant's amendment to claim 1 is sufficient to overcome the rejection of claim 1 under 35 U.S.C. 112, first paragraph.

Applicant's arguments filed 7/15/11 have been fully considered but they are not persuasive. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

The examiner notes that in response to the request for interview in the remarks filed 7/15/11, the examiner attempted to contact Applicant's representative to schedule the interview via telephone multiple times and was unsuccessful.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTORIA J. HICKS whose telephone number is (571)270-7033. The examiner can normally be reached on Monday through Thursday, 7:00am-5:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/V. J. H./
Examiner, Art Unit 3772
8/30/11

/Patricia Bianco/
Supervisory Patent Examiner, Art Unit 3772